

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,	:	Case No. 3:99-cr-86
		(Civil Case No. 3:10-cv-406)
Plaintiff,	:	
vs.	:	District Judge Walter H. Rice
		Magistrate Judge Michael J. Newman
JACK CLARK,	:	
Defendant.	:	

**REPORT AND RECOMMENDATION THAT DEFENDANT'S
RULE 60(b) MOTION (DOC. 1252) BE DENIED WITHOUT PREJUDICE**
* * *
**ORDER DENYING DEFENDANT'S MOTION FOR
APPOINTMENT OF COUNSEL (DOC. 1254)**

This matter is before the Court on Defendant's *pro se* Fed. R. Civ. P. 60(b) motion to vacate Judge Rice's July 13, 2012 Order Adopting the Magistrate Judge's Report and Recommendation (doc. 1248). Doc. 1252. Defendant's motion is now moot because after Defendant filed this motion, Judge Rice vacated his July 13, 2012 Order by notation. Accordingly, the Court **RECOMMENDS** that Defendant's Rule 60(b) motion (doc. 1252) be **DENIED WITHOUT PREJUDICE**.

Also before the Court is Defendant's motion to appoint Attorney Jeffery Slyman to his case. Doc. 1254. The Court has already denied Defendant's request to appoint counsel twice in these proceedings. *See* doc. 1221, 1223. The circumstances have not changed. First, Defendant has not demonstrated that he is indigent. Second, even if he were to make such a showing, there is no entitlement to appointed counsel in a § 2255 case unless an evidentiary hearing is held, and no evidentiary hearing has been ordered in this case. *See Foster v. U.S.*

Parole Comm'n, 515 F. Supp. 541, 546 (S.D. Ohio 1981) (Rice, J.). Accordingly, Defendant's request for appointment of counsel is **DENIED**.

August 3, 3012

s/ **Michael J. Newman**
United States Magistrate Judge